

BOARD OF APPEALS CASE NO. 5132

BEFORE THE

APPLICANTS: Thomas Carolan

ZONING HEARING EXAMINER

**REQUEST: Variance to construct a dwelling
within the required front yard setback;
1705 Church Point Court, Aberdeen**

OF HARFORD COUNTY

Hearing Advertised

Aegis: 3/21/01 & 3/28/01

HEARING DATE: June 18, 2001

Record: 3/23/01 & 3/30/01

*** * * * ***

ZONING HEARING EXAMINER'S DECISION

The Applicant, Thomas Carolan, is requesting a variance, pursuant to Section 267-36B, Table IV, of the Harford County Code, to construct a dwelling within the required 40 foot front yard setback (proposed 35 foot setback), in an R1, Urban Residential District.

The subject property is located at 1705 Church Point Court, Aberdeen, MD 21001, and is more particularly identified on Tax Map 63, Grid 2A, Parcel 332. The subject parcel contains .4858 acres, is located in the Park Farm Beach subdivision, and is presently zoned R1, Urban Residential. The property is entirely within the Second Election District. Mr. and Mrs. Thomas Hiles are the contract purchasers.

The Applicant's project manager, Mr. Brian Dicara appeared and testified before the Hearing Examiner. The witness stated that the parcel in question contains severe slopes and a very large critical area buffer which reduces the buildable area of the lot. The parcel is located within the Chesapeake Bay Critical Area and this request would allow the sensitive environmental features of the lot to remain untouched. The proposed home is smaller than those in the immediate area due to the severe building constraints associated with this parcel. The location of the new home is, in the opinion of this witness the only practical location and the variance is the minimum required in order to construct even a modest residence on the parcel. The setback resulting will be 35 feet instead of the 40 feet required and the 25 feet erroneously shown on the application. While the house is somewhat smaller than other area homes, the witness stated that it is designed in a way that it will be compatible in appearance and type with other homes in the immediate neighborhood.

Case No. 5132 – Thomas Carolan

Mr. Dicara did not feel that the proposed variance would result in any adverse impacts nor would the purposes of the Code in any way be impaired. The witness was emphatic that the parcel is very unique topographically and it was the unique topographic conditions that create the need for the variance and not some action by the homeowner.

The Department of Planning and Zoning found the parcel very unique and recommended approval of the subject request. There were no persons who appeared in opposition to the request.

CONCLUSION:

The Applicant is requesting a variance, pursuant to Section 267-36B, Table IV, of the Harford County Code, to construct a dwelling within the required 40 foot front yard setback (proposed 35 foot setback), in an R1, Urban Residential District.

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

Case No. 5132 – Thomas Carolan

The Maryland Court of Appeals has provided guidance in matters of variance requests and described a two-step analysis in determining whether such requests should be granted. According to the guidance provided by Court, the variance process is a two-step, sequential process:

1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties, such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration of whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists. Cromwell v. Ward, 102 Md. App. 691 (1995).

The Hearing Examiner finds as follows: the subject parcel is topographically unique. This uniqueness has created the need for the requested variance. The request and/or need does not result from any actions on the part of Applicant. The requested variance will have no adverse impacts on neighboring or adjacent properties nor will any material detriment to the purposes or intent of the Code be created. There are no health or safety concerns associated with this request.

The Hearing Examiner, therefore, recommends approval of the request, subject only to the Applicant obtaining any and all necessary permits and inspections.

Date JULY 24, 2001

William F. Casey
Zoning Hearing Examiner